



4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2016-D-3401]

Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled “Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition (21 CFR 10.30).” The guidance describes our views on the scientific evidence needed and the approach to evaluating the scientific evidence on the physiological effects to human health of isolated or synthetic non-digestible carbohydrates that are added to foods.

DATES: The announcement of the guidance is published in the *Federal Register* on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including

attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- Mail/Hand delivery/Courier (for written/paper submissions): Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2016-D-3401 for "Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition (21 CFR 10.30)."

Received comments will be placed in the docket and, except for those submitted as "Confidential

Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions--To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the

prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Paula R. Trumbo, Center for Food Safety and Applied Nutrition (HFS-830), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2579.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

We are announcing the availability of a guidance for industry entitled “Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition (21 CFR 10.30).” We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

In the *Federal Register* of May 27, 2016 (81 FR 33742), we published a final rule amending our Nutrition and Supplement Facts label regulations. The final rule provides a

definition of dietary fiber as non-digestible soluble and insoluble carbohydrates (with three or more monomeric units), and lignin that are intrinsic and intact in plants; isolated or synthetic non-digestible carbohydrates (with three or more monomeric units) determined by FDA to have physiological effects that are beneficial to human health (§ 101.9(c)(6)(i)) (21 CFR 101.9(c)(6)(i)). One mechanism by which a manufacturer could request an amendment to the list of isolated or synthetic non-digestible carbohydrates that meet the dietary fiber definition is by using the citizen petition process in 21 CFR 10.30. If an isolated or synthetic non-digestible carbohydrate meets the dietary fiber definition, then it would be added to the list of dietary fibers in § 101.9(c)(6)(i).

In the *Federal Register* of November 23, 2016, (81 FR 84516), we announced the availability of a draft guidance for industry entitled “Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition (21 CFR 10.30)” and gave interested parties an opportunity to submit comments by January 23, 2017, for us to consider before beginning work on the final version of the guidance. In the *Federal Register* of January 13, 2017 (82 FR 4225), we extended the comment period to February 13, 2017. We received several comments on the draft guidance and have modified the final guidance where appropriate. Changes to the guidance include: (1) the inclusion of studies on diseased populations under certain circumstances as part of our evaluation of the totality of the scientific evidence; (2) additional detail and clarity on the physiological endpoints that we consider when reviewing the scientific evidence; and (3) additional detail regarding factors we consider when evaluating the strength of the scientific

evidence.<sup>1</sup> In addition, we made editorial changes to improve clarity. The guidance announced in this notice finalizes the draft guidance dated November 2016.

## II. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in § 101.9 have been approved under OMB control number 0910-0813.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/FoodGuidances> or <https://www.regulations.gov>. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: February 27, 2018.

Leslie Kux,

Associate Commissioner for Policy.

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<sup>1</sup> This guidance addresses the scientific evaluation of synthetic non-digestible carbohydrates and isolated non-digestible carbohydrate ingredients that are produced as a result of the processing of foods and other sources, to the extent that the ingredients in and of themselves have a specific chemical structure (carbohydrate composition and non-digestible bond linkages). These isolated non-digestible carbohydrates may or may not vary in size. Examples of isolated non-digestible carbohydrates include cellulose, guar gum, and pectin.

